IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5113 OF 2005

Shrikant Dhondiram Katake
40 yrs,
Residing at T-A/63, Akash Ganga,
HSC Complex, Rabodi,
Thane (West). ..Petitioner.

Vs.

1. Union of India
Copy to be served on the Law
Secretaria, Aayakar Bhavan,
Mumbai 400 020.

2. Indian Oil Corporation Ltd.,
through the Secretary, Indian
Oil Corporation Ltd., having
their Office at Mumbai.

3. Bharat Petroleum Corporation Ltd.,
through the Secretary, Bharat
Petroleum Corporation Ltd.,
having their office at Mumbai.

4. Hindustan Petroleum Corporation
Ltd., through the Secretary,

Hindustan Petroleum Corporation
Ltd. having their office at Mumbai..Respondents.

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Mr.P.M.Pradhan for the Petitioner.
Mr.Anurag Gokhale for Respondent No.1.
Mr.Chirag Balsara with Mr.Madhur Rai i/b Negandhi Shah & Hinayatullah for Respondent No.2.
Mr.S.R.Page for Respondent No.3.
Mr.M.D. Siodia with Ms.D.S.Retiwala i/b Rustomji & Ginwala for Respondent No.4.

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CORAM : F.I.REBELLO &
DR.D.Y.CHANDRACHUD, JJ.
29th September, 2005.

ORAL JUDGMENT : (Per F.I.REBELLO, J.)

1. Rule. Heard forthwith.

2. The Petitioner belongs to a backward community and is carrying on business as a transport contractor and owns and possesses a tanker. The Petitioner at times also hires a number of trucks as per the requirement of other

dealers and /or hirers for the purpose of carrying on his business as transport contractor and is in this field for the last about 5-7 years. It is the case of the Petitioner that various oil companies, who are Respondents 2, 3 and 4 which are Government of India undertakings, had in 2002, invited tenders for bulk LPG transport contract, of which the closing date was 11th June, 2002. There was a reservation provided upto 15% for SC and 7.5% for STs and exemption from having a ready made tanker at the time the bid was made. Taking that into consideration, candidates belonging to SC had bid for the contract.

3. Taking into consideration the present state of affairs and entrepreneurhsip, candidates belonging to SC category thought if fit to enter into the said area of starting business of transport contract, pursuant to the notice inviting tenders which appeared some time in June 2005 issued by the three Corporations which are Respondents herein. It is pointed out that unlike in the previous tender of 2002, the notice provided that a tenderer must own a truck or LPG tanker

truck for transportation of bulk LPG by road. There are some other conditions which are also adverted to therein. It is set out that such a condition for owning a truck was never imposed in the past taking into consideration the financial ability of the candidates belonging to the SC categories. By imposing such a condition, the Corporation had sought not only to deprive the candidates belonging to SC who are willing to enter into the business of transportation, but also had sought to discriminate between the various persons and had sought to equate persons belonging to general category and the persons belonging to SC/ST categories. Reference is then made to Article 38 of the Constitution of India. It is submitted that by imposing such a condition at the threshold the Three Corporations are clearly acting contrary to Article 38 which was introduced to see that the State tries to promote the welfare of SC/ST categories. It is also pointed out that whereas the tender notice dated 11th June, 2002 provided that the Corporation would follow the policy as laid down by the Ministry of Petroleum, it was clearly erroneous to deviate from the said policy

when the Corporation had no right whatsoever to change the said policy and by doing so the Respondents have acted contrary to the provisions of Articles 38 and 46 of the Constitution of India and apart from that by imposing the condition as set out earlier acted arbitrarily and thus violated Article 14 of the Constitution of India. It is also pointed out that the notice inviting tenders is clearly violative of Article 19(1)(g) and is not a restriction as envisaged by Article 19(6) of the Constitution. It is on this basis that the Petitioner approached this Court for the various reliefs as set out therein.

4. In answer to the Petition, an affidavit was filed by K.Narayanan, Manager, LPG, OPS of Bharat Petroleum Corporation Ltd. It is pointed out that the allegations by the Petitioner that the Respondents are violating various articles of the Constitution particularly with reference to SC & ST candidates and not adhering to the guide-lines issued by the Ministry of Petroleum and Natural Gas are false. Various other contentions raised have also been adverted to and replied. It is pointed

out that the Corporation is adhering to the guide-lines as published by the Ministry of Petroleum and Natural Gas on 18th August, 1994. The said notification is an annexure to the said affidavit. One of the relevant clauses is Clause (iii) which reads as under :

> "The SC/ST members should fulfil all tender conditions, and will not be eligible for any price preference or relaxation of standards."

Clause (i), however, does provide for the reservation which is 15% for SC and 7-1/2% for ST candidates. It is therefore set out that the Respondent Corporations including Respondent No.3 are adhering to these guide-lines when they issued advertisement inviting applications. It is also pointed out that the existing bulk LPG transportation contract is valid upto 31st October, 2005 and in these circumstances, the oil companies jointly floated the tender on 27th June, 2005. The various letters of intent issued by the Respondents to the contractors in June 2005 were set out. A

chart is annexed and the number of LOIs issued to SC/ST applicants and the total number of trucks actually received is set out.

5. Pursuant to various contentions urged before this Court and a specific query as to whether the exemption from having a ready LPG Tanker, in the earlier tender was pursuant to the direction by the Government of India or pursuant to any policy of the Corporation itself, additional affidavits dated 20th September, 2005 and 23rd September, 2005 have been filed by Mr.K. Narayanan. In the affidavit of 23rd September, 2005, it is pointed out that in May 1999 when tenders were floated by the oil companies, the oil companies had taken a decision that the additional facility of submitting the offers for getting the tenders without ready tank trucks would be available to all tenderers, general category as well as SC/ST. When the tenders were floated during June 2002 by the oil companies, the facility of submitting offers without tanker trucks came to be discontinued for general category tenderers in view of the fact that number of tanker trucks

available in the market had increased. In the tender floated in June 2002, the SC/ST category tenderers were given the facility to submit the offers without owning ready tanker trucks which were to be made available within the period of 180 days from the date of acceptance of the offer by the oil companies. It is specifically set out that the said decision was taken by the oil companies jointly on their own. In other words, it is not the decision of the Government of India. There is no rejoinder rebutting the said averment.

It is next set out that in the tender floated in July 2005. the oil companies jointly took a decision not to provide any additional facilities to any candidate including SC/ST tenderers, but retained the reservation as per the guide-lines and policy framed by the Government of India and conveyed the decision to the Ministry of Petroleum and Natural Gas by letters dated 3rd May, 2005 and 17th May 2005. Reasons for not providing any additional facilities and/or preference to SC/ST category candidates in the current tender floated for the period 2005-07 are set out. It is also

specifically set out that the guide-lines issued by the Government of India dated 18th August, 1994 to the oil companies have been adhered to by all the oil companies. Those guide-lines as noted earlier do not provide for any exemption for SC/ST, and on the contrary set out that there will be no relaxation of standards for ST/ST candidates.

6. Considering the above, the first question is whether the Respondent Corporations by not providing the concession as provided when the tenders were floated in the year 2002 have acted arbitrarily or in violation of the provisions of Article 14. Needless to say that the policy of reservation is pursuant to Article 15(4) of the Constitution of India. In the instant case, the Central Government by the policy decision of 18th August, 1994 had provided for reservation of 15% and 7-1/5% for SC and ST candidates respectively. In other words, the oil companies have complied with the directions issued by the Government of India in the matter of reservation so as to enable the candidates from SC/ST categories to avail of the benefits. The only question is whether

Respondents 2 to 4 considering the concession given by them when they floated the tenders in the year 2002 were bound also to include the said condition in the tenders presently floated. From the affidavit of Mr.Narayanan, it is clear that when the tenders were floated in 1999, the facility of submitting the offers for getting the tenders without ready tanker trucks was made available to all the Applicants whether they belong to open category or reserved category. In the year 2002 that condition was excluded in so far as open category candidates, but was retained in the year 2002 for SC/ST candidates. The Oil Corporations thereafter noted that letters of intent had been taken by SC/ST candidates, but no trucks had been supplied, took a policy decision not to continue the said practice but to treat both open and SC/ST candidates equally.

7. On behalf of the Petitioner, learned counsel has been unable to point out any other notification apart from the notification dated 18th August, 1994 which lays down the policy of the Government of India. The submission sought to be

made is based on the letters addressed by the oil companies to the Joint Secretary, Ministry of Petroleum and Natural Gas. The communication by the oil companies to the Ministry and the language therein cannot lead to an inference that the Government of India has taken a decision other than that which was taken on 18th August, 1994, atleast none has been brought to our notice. We see no reason as to why Respondents 2 to 4, who had granted concession to SC/ST candidates for the year 2002 when it was not required to be given, should say otherwise in the affidavit filed before this Court. We therefore, do not find that Respondents 2 to 4 have violated any policy decision of the Government of India in the matter of awarding tenders in so far as SC/ST candidates are concerned and/or that their action in not retaining the concession in the year 2005 is arbitrary.

8. That leaves us with the next contention that by not giving the said concession, the SC/ST candidates are disabled from participating in the process. The fact remains that SC/ST candidates have been participating since 1999. They have

participated also in the present tender. It is presumed therefore that SC/ST candidates who had earlier entered into contracts would be having trucks available. Apart from that, the policy of reservation has not been given a go-by. The policy of reservation of 15/% for SC and 7-1/2% for ST continues. The decision to do away with the concession is purely a business decision of Respondents 2 to 4 or in other words, a policy decision of Respondents 2 to 4. It is therefore, not possible for us to interfere with the said decision taken by the oil companies.

9. The last contention is that this interferes with the right of SC/ST candidates from carrying on trade and business and the removal of the concession which is imposed amounts to a restriction in carrying on trade and business. The tenders have been floated by Respondents 2 to 4. All eligible candidates were entitled to apply if they satisfy the requirements. Therefore the mandate of Articles 19(1)(g) read with 19(6) is not at all attracted. Doing away with a concession what the oil companies gave SC/ST candidates in the

year 2002 whilst inviting tenders in the year 2005 cannot amount to the imposition of a restriction on the right of SC/ST candidates to carry on trade or business. Considering the above, we find no reason to interfere. Rule discharged. In the circumstances of the case, there shall be no order as to costs.

(F.I.REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)